

AN ACT concerning taxes.

Be it enacted by the People of the State of Illinois,
represented in the General Assembly:

Section 5. The Property Tax Code is amended by changing Sections 31-5, 31-10, 31-20, and 31-25 and by adding Section 3-46 as follows:

(35 ILCS 200/31-5)

Sec. 31-5. Definitions. "Recordation" includes the issuance of certificates of title by Registrars of Title under the Registered Titles (Torrens) Act pursuant to the filing of deeds or trust documents for that purpose, as well as the recording of deeds or trust documents by recorders.

"Department" means the Department of Revenue.

"Person" means any natural individual, firm, partnership, association, joint stock company, joint adventure, public or private corporation, limited liability company, or a receiver, executor, trustee, guardian or other representative appointed by order of any court.

"Value" means the amount of the full actual consideration for the real property, including the amount of any lien on the real property assumed by the buyer.

"Trust document" means a document required to be recorded under the Land Trust Recordation and Transfer Tax Act.

"Beneficial interest" includes, but is not limited to:

(1) the beneficial interest in an Illinois land trust;

(2) the lessee interest in a ground lease (including any interest of the lessee in the related improvements) that provides for a term of 30 or more years when all options to renew or extend are included, whether or not any portion of the term has expired; or

(3) the indirect interest in real property as reflected by a controlling interest in a real estate entity.

"Controlling interest" means more than 50% of the fair market value of all ownership interests or beneficial interests in a real estate entity.

"Real estate entity" means any person including, but not limited to, any partnership, corporation, limited liability company, trust, other entity, or multi-tiered entity, that exists or acts substantially for the purpose of holding directly or indirectly title to or beneficial interest in real property. There is a rebuttable presumption that an entity is a real estate entity if it owns, directly or indirectly, real property having a fair market value greater than 75% of the total fair market value of all of the entity's assets, determined without deduction for any mortgage, lien, or encumbrance.

(Source: P.A. 92-651, eff. 7-11-02.)

(35 ILCS 200/31-10)

Sec. 31-10. Imposition of tax. A tax is imposed on the privilege of transferring title to real estate located in Illinois, ~~as represented by the deed that is filed for recordation,~~ and on the privilege of transferring a beneficial interest in real property located in Illinois that ~~is the subject of a land trust as represented by the trust document that is filed for recordation,~~ and on the privilege of transferring a controlling interest in a real estate entity owning property located in Illinois, at the rate of 50¢ for each \$500 of value or fraction of \$500 stated in the declaration required by Section 31-25. If, however, the deed ~~or trust document states that the~~ real estate, beneficial interest, or controlling interest is transferred subject to a mortgage, the amount of the mortgage remaining outstanding at

the time of transfer shall not be included in the basis of computing the tax. The tax is due if the transfer is made by one or more related transactions or involves one or more persons or entities and whether or not a document is recorded.

(Source: P.A. 86-624; 86-925; 86-1028; 86-1475; 87-543; 88-455.)

(35 ILCS 200/31-20)

Sec. 31-20. Affixing of stamps. Payment of the tax shall be evidenced by revenue stamps in the amount required to show full payment of the tax imposed by Section 31-10. Except as provided in Section 31-45, a deed, document transferring a controlling interest in real property, or trust document shall not be accepted for filing by any recorder or registrar of titles unless revenue stamps in the required amount have been purchased from the recorder or registrar of titles of the county where the deed, document transferring a controlling interest in real property, or trust document is being filed for recordation. The revenue stamps shall be affixed to the deed, document transferring a controlling interest in real property, or trust document by the recorder or the registrar of titles either before or after recording as requested by the grantee. A person using or affixing a revenue stamp shall cancel it and so deface it as to render it unfit for reuse by marking it with his or her initials and the day, month and year when the affixing occurs. The marking shall be made by writing or stamping in indelible ink or by perforating with a machine or punch. However, the revenue stamp shall not be so defaced as to prevent ready determination of its denomination and genuineness.

(Source: P.A. 86-624; 86-925; 86-1028; 86-1475; 87-543; 88-455.)

(35 ILCS 200/31-25)

Sec. 31-25. Transfer declaration. At the time a deed, a document transferring a controlling interest in real property, or trust document is presented for recordation, or within 3 business days after the transfer is effected, whichever is earlier, there shall also be presented to the recorder or registrar of titles a declaration, signed by at least one of the sellers and also signed by at least one of the buyers in the transaction or by the attorneys or agents for the sellers or buyers. The declaration shall state information including, but not limited to: (a) the value of the real property or beneficial interest in real property located in Illinois ~~the full consideration for the property~~ so transferred; (b) the parcel identifying number of the property; (c) the legal description of the property; (d) the date of the deed, the date the transfer was effected, or the date of the trust document; (e) the type of deed, transfer, or trust document; (f) the address of the property; (g) the type of improvement, if any, on the property; (h) information as to whether the transfer is between related individuals or corporate affiliates or is a compulsory transaction; (i) the lot size or acreage; (j) the value of personal property sold with the real estate; (k) the year the contract was initiated if an installment sale; and (l) the name, address, and telephone number of the person preparing the declaration. Except as provided in Section 31-45, a deed, a document transferring a controlling interest in real property, or trust document shall not be accepted for recordation unless it is accompanied by a declaration containing all the information requested in the declaration. When the declaration is signed by an attorney or agent on behalf of sellers or buyers who have the power of direction to deal with the title to the real estate under a land trust agreement, the trustee being the mere repository of record

legal title with a duty of conveying the real estate only when and if directed in writing by the beneficiary or beneficiaries having the power of direction, the attorneys or agents executing the declaration on behalf of the sellers or buyers need identify only the land trust that is the repository of record legal title and not the beneficiary or beneficiaries having the power of direction under the land trust agreement. The declaration form shall be prescribed by the Department and shall contain sales information questions. For sales occurring during a period in which the provisions of Section 17-10 require the Department to adjust sale prices for seller paid points and prevailing cost of cash, the declaration form shall contain questions regarding the financing of the sale. The subject of the financing questions shall include any direct seller participation in the financing of the sale or information on financing that is unconventional so as to affect the fair cash value received by the seller. The intent of the sales and financing questions is to aid in the reduction in the number of buyers required to provide financing information necessary for the adjustment outlined in Section 17-10. For sales occurring during a period in which the provisions of Section 17-10 require the Department to adjust sale prices for seller paid points and prevailing cost of cash, the declaration form shall include, at a minimum, the following data: (a) seller paid points, (b) the sales price, (c) type of financing (conventional, VA, FHA, seller-financed, or other), (d) down payment, (e) term, (f) interest rate, (g) type and description of interest rate (fixed, adjustable or renegotiable), and (h) an appropriate place for the inclusion of special facts or circumstances, if any. The Department shall provide an adequate supply of forms to each recorder and registrar of titles in the State.

(Source: P.A. 91-555, eff. 1-1-00.)

(35 ILCS 200/31-46 new)

Sec. 31-46. Exemption from tax equal to corporate franchise taxes paid. If a transfer of a controlling interest in a real estate entity is taxed under this Article and the real estate entity liable for the tax under this Article is also liable for corporate franchise taxes under the Business Corporation Act of 1983 as a result of the transfer, then the real estate entity is exempt from paying the tax imposed under this Article to the extent of the corporate franchise tax paid by the real estate entity as a result of the transfer. The exemption shall not reduce the real estate entity's tax liability under this Article to less than zero.

Section 10. The Stock, Commodity, or Options Transaction Tax Exemption Act is amended by adding Section 3 as follows:

(35 ILCS 820/3 new)

Sec. 3. Construction of Act. Nothing in this Act shall be construed as prohibiting or otherwise invalidating any real estate transfer tax or fee authorized or permitted by Section 31-10 of the Property Tax Code, Section 5-1031.1 of the Counties Code, or Section 8-3-19 of the Illinois Municipal Code. This Section is intended as a clarification and not as a change to existing law.

Section 15. The Counties Code is amended by changing Section 5-1031.1 as follows:

(55 ILCS 5/5-1031.1)

Sec. 5-1031.1. Home rule real estate transfer taxes.

(a) After the effective date of this amendatory Act of the 93rd General Assembly 1996 and subject to this Section, a home rule county may impose or increase a tax or other fee on the privilege of transferring title to real estate, as

~~represented by the deed that is filed for recordation, and on the privilege of transferring a beneficial interest in a land trust holding legal title to real property, and on the privilege of transferring a controlling interest in a real estate entity, as the terms "beneficial interest", "controlling interest", and "real estate entity" are defined in Article 31 of the Property Tax Code as represented by the trust document that is filed for recordation. Such a tax or other fee on the privilege of transferring title to real estate, as represented by the deed that is filed for recordation, and on the privilege of transferring a beneficial interest in a land trust holding legal title to real property, as represented by the trust document that is filed for recordation,~~ shall hereafter be referred to as a real estate transfer tax.

(b) Before adopting a resolution to submit the question of imposing or increasing a real estate transfer tax to referendum, the corporate authorities shall give public notice of and hold a public hearing on the intent to submit the question to referendum. This hearing may be part of a regularly scheduled meeting of the corporate authorities. The notice shall be published not more than 30 nor less than 10 days prior to the hearing in a newspaper of general circulation within the county. The notice shall be published in the following form:

Notice of Proposed (Increased) Real Estate Transfer Tax for (commonly known name of county).

A public hearing on a resolution to submit to referendum the question of a proposed (increased) real estate transfer tax for (legal name of the county) in an amount of (rate) to be paid by the buyer (seller) of the real estate transferred will be held on (date) at (time) at (location). The current rate of real estate transfer tax imposed by (name of county) is (rate).

Any person desiring to appear at the public hearing and present testimony to the taxing district may do so.

(c) A notice that includes any information not specified and required by this Section is an invalid notice. All hearings shall be open to the public. At the public hearing, the corporate authorities of the county shall explain the reasons for the proposed or increased real estate transfer tax and shall permit persons desiring to be heard an opportunity to present testimony within reasonable time limits determined by the corporate authorities. A copy of the proposed ordinance shall be made available to the general public for inspection before the public hearing.

(d) No home rule county shall impose a new real estate transfer tax after the effective date of this amendatory Act of 1996 without prior approval by referendum. No home rule county shall impose an increase of the rate of a current real estate transfer tax without prior approval by referendum. A home rule county may impose a new real estate transfer tax or may increase an existing real estate transfer tax with prior referendum approval. The referendum shall be conducted as provided in subsection (e). An existing ordinance or resolution imposing a real estate transfer tax may be amended without approval by referendum if the amendment does not increase the rate of the tax or add transactions on which the tax is imposed.

(e) The home rule county shall, by resolution, provide for submission of the proposition to the voters. The home rule county shall certify the resolution and the proposition to the proper election officials in accordance with the general election law. If the proposition is to impose a new real estate transfer tax, it shall be in substantially the following form: "Shall (name of county) impose a real estate transfer tax at a rate of (rate) to be paid by the buyer (seller) of the real estate transferred, with the revenue of

the proposed transfer tax to be used for (purpose)?" . If the proposition is to increase an existing real estate transfer tax, it shall be in the following form: "Shall (name of county) impose a real estate transfer tax increase of (percent increase) to establish a new real estate transfer tax rate of (rate) to be paid by the buyer (seller) of the real estate transferred? The current rate of the real estate transfer tax is (rate), and the revenue is used for (purpose). The revenue from the increase is to be used for (purpose).".

If a majority of the electors voting on the proposition vote in favor of it, the county may impose or increase the real estate transfer tax.

(f) Nothing in this amendatory Act of 1996 shall limit the purposes for which real estate transfer tax revenues may be collected or expended.

(g) A home rule county may not impose real estate transfer taxes other than as authorized by this Section. This Section is a denial and limitation of home rule powers and functions under subsection (g) of Section 6 of Article VII of the Illinois Constitution.

(h) Notwithstanding subsection (g) of this Section, any real estate transfer taxes adopted by a county at any time prior to January 17, 1997 (the effective date of Public Act 89-701) and any amendments to any existing real estate transfer tax ordinance adopted after that date, in accordance with the law in effect at the time of the adoption of the amendments, are not preempted by this amendatory Act of the 93rd General Assembly.

(Source: P.A. 89-701, eff. 1-17-97; 90-14, eff. 7-1-97.)

Section 20. The Illinois Municipal Code is amended by changing Section 8-3-19 as follows:

(65 ILCS 5/8-3-19)

Sec. 8-3-19. Home rule real estate transfer taxes.

(a) After the effective date of this amendatory Act of the 93rd General Assembly 1996 and subject to this Section, a home rule municipality may impose or increase a tax or other fee on the privilege of transferring title to real estate, as ~~represented by the deed that is filed for recordation,~~ and on the privilege of transferring a beneficial interest in a ~~land trust holding legal title to~~ real property, and on the privilege of transferring a controlling interest in a real estate entity, as the terms "beneficial interest", "controlling interest", and "real estate entity" are defined in Article 31 of the Property Tax Code as ~~represented by the trust document that is filed for recordation.~~ Such a tax or other fee ~~on the privilege of transferring title to real estate, as represented by the deed that is filed for recordation, and on the privilege of transferring a beneficial interest in a land trust holding legal title to real property, as represented by the trust document that is filed for recordation,~~ shall hereafter be referred to as a real estate transfer tax.

(b) Before adopting a resolution to submit the question of imposing or increasing a real estate transfer tax to referendum, the corporate authorities shall give public notice of and hold a public hearing on the intent to submit the question to referendum. This hearing may be part of a regularly scheduled meeting of the corporate authorities. The notice shall be published not more than 30 nor less than 10 days prior to the hearing in a newspaper of general circulation within the municipality. The notice shall be published in the following form:

Notice of Proposed (Increased) Real Estate Transfer Tax for (commonly known name of municipality).

A public hearing on a resolution to submit to

referendum the question of a proposed (increased) real estate transfer tax for (legal name of the municipality) in an amount of (rate) to be paid by the buyer (seller) of the real estate transferred will be held on (date) at (time) at (location). The current rate of real estate transfer tax imposed by (name of municipality) is (rate).

Any person desiring to appear at the public hearing and present testimony to the taxing district may do so.

(c) A notice that includes any information not specified and required by this Section is an invalid notice. All hearings shall be open to the public. At the public hearing, the corporate authorities of the municipality shall explain the reasons for the proposed or increased real estate transfer tax and shall permit persons desiring to be heard an opportunity to present testimony within reasonable time limits determined by the corporate authorities. A copy of the proposed ordinance shall be made available to the general public for inspection before the public hearing.

(d) No home rule municipality shall impose a new real estate transfer tax after the effective date of this amendatory Act of 1996 without prior approval by referendum. No home rule municipality shall impose an increase of the rate of a current real estate transfer tax without prior approval by referendum. A home rule municipality may impose a new real estate transfer tax or may increase an existing real estate transfer tax with prior referendum approval. The referendum shall be conducted as provided in subsection (e). An existing ordinance or resolution imposing a real estate transfer tax may be amended without approval by referendum if the amendment does not increase the rate of the tax or add transactions on which the tax is imposed.

(e) The home rule municipality shall, by resolution, provide for submission of the proposition to the voters. The home rule municipality shall certify the resolution and the

proposition to the proper election officials in accordance with the general election law. If the proposition is to impose a new real estate transfer tax, it shall be in substantially the following form: "Shall (name of municipality) impose a real estate transfer tax at a rate of (rate) to be paid by the buyer (seller) of the real estate transferred, with the revenue of the proposed transfer tax to be used for (purpose)?" If the proposition is to increase an existing real estate transfer tax, it shall be in the following form: "Shall (name of municipality) impose a real estate transfer tax increase of (percent increase) to establish a new transfer tax rate of (rate) to be paid by the buyer (seller) of the real estate transferred? The current rate of the real estate transfer tax is (rate), and the revenue is used for (purpose). The revenue from the increase is to be used for (purpose)."

If a majority of the electors voting on the proposition vote in favor of it, the municipality may impose or increase the municipal real estate transfer tax or fee.

(f) Nothing in this amendatory Act of 1996 shall limit the purposes for which real estate transfer tax revenues may be collected or expended.

(g) A home rule municipality may not impose real estate transfer taxes other than as authorized by this Section. This Section is a denial and limitation of home rule powers and functions under subsection (g) of Section 6 of Article VII of the Illinois Constitution.

(h) Notwithstanding subsection (g) of this Section, any real estate transfer taxes adopted by a municipality at any time prior to January 17, 1997 (the effective date of Public Act 89-701) and any amendments to any existing real estate transfer tax ordinance adopted after that date, in accordance with the law in effect at the time of the adoption of the amendments, are not preempted by this amendatory Act of the

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93rd General Assembly.

(Source: P.A. 89-701, eff. 1-17-97.)